RECORD AND BRIEF
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No. 16-405

IN THE

Supreme Court of the United States

BNSF RAILWAY COMPANY,

Petitioner,

v.

KELLI TYRRELL, as Special Administrator for the Estate of Brent T. Tyrrell; and ROBERT M. NELSON,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Montana

MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

KATHRYN D. KIRMAYER
DANIEL SAPHIRE
Counsel of Record
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
(202) 639-2505
dsaphire@aar.org

Counsel for Amicus Curiae Association of American Railroads

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MOTION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Association of American Railroads (AAR) respectfully moves for permission to file the attached brief *amicus curiae*. This motion is filed pursuant to Rule 37.2(b). Petitioner has consented to AAR's filing of a brief.[1] Respondent has not consented.

AAR is an incorporated, nonprofit trade association representing the nation's major freight railroads, Amtrak, and some smaller freight railroads and commuter authorities. AAR seeks leave to file a brief

[1] The letter expressing consent has been filed with the Clerk of the Court.

amicus curiae only when the case presents an issue of great significance to the railroad industry as a whole and in those instances such requests have been granted.[2]

This case arises under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§51-60. FELA, a federal negligence statute, takes the place of workers' compensation in the railroad industry. Hundreds of FELA suits are filed against all major railroads each year. The railroad industry has a strong interest in assuring that lower courts do not improperly expand the liability of, nor otherwise disadvantage, railroads under FELA.

In this case, the Montana Supreme Court ignored recent holdings of this Court, and ruled that in FELA suits Montana courts may exercise general personal jurisdiction over railroads that are neither incorporated nor headquartered in Montana. The court held that as long as a nonresident railroad is doing business in the state, Montana may exercise personal jurisdiction—even if the cause of action did not arise in Montana. This holding abrogates the due process rights of FELA defendants and confers a serious and unwarranted disadvantage on railroad defendants.

AAR hopes to bring a broad, industry-wide perspective to the issue before the Court. The perspective and concerns of an industry as a whole can be different from that of an individual litigant. AAR works closely with its member railroads on a host of issues arising under FELA. AAR also maintains a close liaison with the National Association of Railroad Trial Counsel,

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[2] *E.g., Bolen v. BNSF Ry.*, 136 S. Ct. 1660 (2016); *CSX Transp., Inc. v. Hensley*, 556 U.S. 838 (2009); *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158 (2007).

an organization of over 900 attorneys representing railroads nationwide in personal injury litigation. AAR is thoroughly familiar with the trends and key issues that confront its members in FELA litigation.

AAR has an interest that goes beyond assisting the petitioner in obtaining relief from an erroneous decision, to ensuring that the constitutional rights of railroads are enforced throughout the nation's state courts.

For these reasons, leave to file the attached *amicus curiae* brief should be granted.

Respectfully submitted,

KATHRYN D. KIRMAYER
DANIEL SAPHIRE
Counsel of Record
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
(202) 639-2505
dsaphire@aar.org

Counsel for Amicus Curiae Association of American Railroads

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Association of American Railroads (AAR) is an incorporated, nonprofit trade association representing the nation's major freight railroads, Amtrak, and some smaller freight railroads and commuter authorities. AAR's members operate approximately 83 percent of the rail industry's line haul mileage, produce 97 percent of its freight revenues, and employ 95 percent of rail employees. In matters of significant interest to its members, AAR frequently appears on behalf of the railroad industry before Congress, administrative agencies and the courts.[1]

One such matter is the Federal Employers' Liability Act (FELA), 45 U.S.C. §§51-60, a negligence statute enacted over a century ago. Under FELA, railroad employees who are injured on the job may seek compensation from their employing railroad. FELA differs fundamentally from the workers' compensation systems that today cover virtually all other U.S. industries. Under a workers' compensation system, the concept of assigning fault for workplace injuries is abandoned in favor of the principle that all employees suffering legitimate work-related injuries are deserving of compensation. In contrast, liability under FELA is conditioned on proving that the employer's negligence caused the injury, and compensation is reduced to the extent the injury was caused by the employee's negligence.

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[1] As required by Rule 37.2(a), counsel for *amicus curiae* AAR has timely notified counsel of record for the parties of AAR's intent to file this brief. Pursuant to Rule 37.6, AAR states that no person or entity other than AAR has made monetary contributions toward this brief, and no counsel for any party authored this brief in whole or in part.

FELA presents unique issues and problems for railroads. Each year hundreds of FELA lawsuits, like the case below, are brought against AAR member railroads. In each of these cases, the parties must litigate over the fact-specific questions of fault, causation, and damages. The railroads spend hundreds of millions of dollars annually in the defense and payment of FELA claims.

In this case, the Montana Supreme Court held that Montana courts may exercise general personal jurisdiction over FELA defendants as long as the defendant is doing business in the state, even though Montana is neither the defendant's place of incorporation nor principle place of business. This holding ignores recent decisions of this Court. It is of great concern to AAR's members since it subjects them to suit in numerous jurisdictions where they are neither "at home" nor where the cause of action arose. The holding below sets railroads apart as a class of defendants that are not entitled to the protection of the Due Process Clause of the Fourteenth Amendment.

It is of utmost importance to AAR's members that this Court provide guidance to state courts on the proper exercise of personal jurisdiction in FELA cases.

SUMMARY OF THE ARGUMENT

The Montana Supreme Court held that Montana courts may exercise general personal jurisdiction over railroads that are defendants in FELA cases as long as the railroad is doing business in the state. That ruling ignored prior decisions of this Court that established the constitutional limitations on personal jurisdiction over corporate defendants. Those decisions require that when the cause of action does not arise in the

forum state personal jurisdiction may be exercised only where the corporation is "at home." Other than under exceptional circumstances, corporations are at home in their state of incorporation or principle place of business. The court below held that this Court's decisions do not apply to FELA case, and, in any event, that when Congress enacted FELA it designated railroads as being "at home" wherever they do business. The court was wrong.

In FELA cases, railroads frequently are sued in states where the cause of action is not related to the railroads activities in the forum state and where they are neither incorporated nor have their principle place of business. The four largest freight railroads and Amtrak each do business in over 20 states, and under the ruling below, would be subject to personal jurisdiction in each of those states. The Montana court's conclusion that such a result has been approved by this Court is incorrect. This Court has never held that state courts have general personal jurisdiction in FELA cases wherever a railroad does business.

Nor was the court below correct when it held that Section 56 of FELA confers personal jurisdiction on state courts wherever a FELA defendant is doing business. In 1910 Congress amended Section 56 to expand federal court venue in FELA cases. It also clarified that state courts have concurrent subject matter jurisdiction in FELA cases, a provision Congress deemed necessary to address an early state court holding that state courts did not have subject matter jurisdiction in FELA cases. However, the statutory language and legislative history make clear that Section 56 does not address personal jurisdiction in FELA cases. Personal jurisdiction in FELA cases

remains subject to the requirements of the Due Process Clause as determined by this Court.

ARGUMENT

THE PETITION SHOULD BE GRANTED BECAUSE THE RULING BELOW, WHICH DEPRIVED RAILROAD DEFENDANTS OF THEIR CONSTITUTIONAL RIGHTS, WILL HAVE NATIONWIDE IMPLICATIONS

1. The Court Below Ignored This Court's Decisions on the Constitutional Limitations on Personal Jurisdiction.

In 1908, Congress enacted the Federal Employers' Liability Act (FELA) as a national workplace compensation scheme that governs the U.S. railroad industry. 45 U.S.C. §§51-60.[2] What Congress could not and did not do when it enacted FELA is override the constitutional rights of defendants. Nonetheless, the Montana Supreme Court has ruled that Congress did just that. That decision was incorrect, and because of its far-reaching implications, should be reviewed and reversed by this Court.

FELA is based on tort concepts. In order for railroad employees to receive compensation for workplace injuries they must prove their employer's negligence caused the injury in whole or in part. 45 U.S.C. §51. If the employer can prove the employee's negligence contributed to the injury, compensation is reduced in proportion to the employee's negligence. 45 U.S.C. §53. If a railroad and an injured employee cannot reach an agreement over compensation, the employee's recourse is to file a FELA lawsuit against the

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[2] Under the Jones Act, 46 U.S.C. §30104, the maritime industry also is covered by FELA.

railroad, in which the employee must prove all the elements of a negligence action. *Fulk v. Ill. Cent. R.R.*, 22 F.3d 120, 124 (7th Cir. 1994).

While the number of injuries suffered by railroad employees has greatly decreased over the past few decades, railroads continue to face hundreds of FELA suits each year.[3] Substantive federal law governs those lawsuits. *Urie v. Thompson*, 337 U.S. 163, 174 (1949). Subject matter jurisdiction over a FELA suit exists in either state or federal court. 45 U.S.C. §56. However, as with all other causes of action, in order to hear a FELA suit, in addition to subject matter jurisdiction, a court must have personal jurisdiction over the parties. As this Court has instructed, a court's exercise of personal jurisdiction is subject to the limitations imposed by the U.S. Constitution. *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

The situs of FELA lawsuits has long been a contentious issue. It is widely acknowledged that plaintiffs often will seek out forums believed to be favorable for plaintiffs, even at apparent inconvenience to themselves. *Miles v. Ill. Cent. R.R.*, 315 U.S. 698, 707 (1942) (Jackson, J. concurring). Historically, attempts to find favorable jurisdictions have been a prominent feature of FELA litigation, with plaintiffs often bringing suit in jurisdictions with little apparent connection to the underlying litigation. *See e.g., Matthews v. N. J. Transit Corp.*, 1995 WL 217493

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[3] Injuries to railroad employees have decreased by 84% since 1980, and by 47% since 2000. http://safetdata.fra.dot.gov/office of safety/publicsite/summary.aspx (2011-2015); Federal Railroad Administration, *Railroad Safety Statistics Annual Report*, 1997-2010, Tables 1-2, 4-1; Federal Railroad Administration, *Accident/Incident Bulletin*, 1980-1996, Tables 13, 36.

(S.D. N.Y. 1995) (FELA suit filed in New York where plaintiff was a New Jersey resident, was injured in New Jersey and all expected witnesses resided and worked in New Jersey); *Hayes v. Chicago, Rock Island & Pac. R.R.*, 79 F.Supp. 821 (D. Minn. 1948) (litigation involving eight plaintiffs who brought suit in Minnesota, one of whom sustained injury in Texas, one in Illinois, and six in Oklahoma); *Palumbo v. N. J. Transit Rail Ops.*, 2003 WL 256939 (Pa. Commw. Ct. 2003) (plaintiff, who brought suit in Pennsylvania, was injured in New Jersey, resided in New Jersey, and all witnesses were located in New Jersey); *Norfolk & W. Ry. Co. v. Tsapis*, 400 S.E.2d 239 (W.Va. 1990) (litigation involving 818 plaintiffs who brought suit in a single West Virginia County, of whom 644 were not West Virginia residents); *Norman v. Norfolk & W. Ry. Co.*, 323 A.2d 850 (Pa. Super. 1974) (plaintiff, a Kentucky resident who was injured in Kentucky, brought suit in Pennsylvania).

The case below is such a case. Two railroad employees who did not reside, nor allege injury, in Montana brought suit in Montana state court against petitioner BNSF Railway. While BNSF operates in Montana, and 27 other states, it is not incorporated in Montana, nor does it have its principle place of business in Montana. Pet. at 6-7. The Montana Supreme Court held that Montana courts have personal jurisdiction over nonresident railroads like BNSF in FELA cases, even if the cause of action does not arise from the railroad's activities in the state. Pet. App. 1a-19a.

That ruling is inconsistent with this Court's holdings regarding the constitutional limitations on general personal jurisdiction under the Due Process Clause of the Fourteenth Amendment. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *Goodyear Dunlop Tires*

Ops., S.A. v. Brown, 131 S. Ct. 2846 (2011). In those cases, this Court has held that "a court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State," *Daimler*, 134 S.Ct. at 754 (quoting *Goodyear*, 131 S. Ct. at 2851), and that absent exceptional circumstances, "[w]ith respect to a corporation, the place of incorporation and principle place of business are 'paradig[m] . . . bases for general jurisdiction.'" *Id.* at 760.

The court below held that those decisions are inapplicable to FELA. The Montana Court distinguished *Daimler* because it "did not involve a FELA claim or a railroad defendant." Pet. App. 11a. However, *Daimler* addressed the requirements of the Due Process Clause of the Fourteenth Amendment, requirements that are no less applicable when a lawsuit arises under FELA or because the defendant is a railroad. Noting that this Court "did not address personal jurisdiction under the FELA" in *Daimler*, the Montana court did not explain why a different constitutional analysis for personal jurisdiction would apply to suits brought under FELA. Instead, in direct contradiction to *Daimler*, the court established its own test, holding that "BNSF does business in Montana; therefore, under the FELA, Montana courts have general personal jurisdiction over BNSF." Pet. App. 15a.

That concept has been rejected by this Court. "A corporation's continuous activity of some nature within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Goodyear*, 131 S.Ct. at 2855 (internal quotations omitted). In *Daimler*, this Court reaffirmed

that to assert general jurisdiction over a corporation on the grounds that it "engages in a substantial, continuous, and systematic course of business" would be "unacceptably grasping." 134 S.Ct. at 761. The fact that a cause of action arises under FELA does not create an exception to the protections provided to all litigants by the Constitution.

2. The Question Presented Has Nationwide Implications for Railroads.

The decision below merits review because it has implications beyond just the State of Montana and BNSF. It will impact all large railroads, which face FELA litigation throughout the nation. Large railroads conduct operations in numerous states: BNSF in 28; Union Pacific in 23; CSX in 23 (and the District of Columbia); and Norfolk Southern in 21. In addition to owning tracks, in many of those states large railroads operate rail yards (where traffic is interchanged and trains are broken down and reassembled) and many other facilities; they also originate and terminate substantial amounts of traffic in many of the states in which they operate. Amtrak, which provides intercity passenger rail service nationwide, operates in 46 states. While Amtrak operates over tracks owned by the freight railroads over most of its routes, it serves hundreds of stations located throughout its network. As a national operator, Amtrak solicits business all over the country.

This Court has held that business activities of that nature are not sufficient to give a state's courts general personal jurisdiction over a corporation. Nonetheless, the only limitation the court below seemed to put on its power to hale a nonresident railroad into Montana courts is that the railroad does business in the state.

That test hardly comports with the requirements of due process which focuses on providing defendants with predictability and "minimum assurances" about where they can be sued. *Daimler*, 134 S.Ct. at 762. This Court has explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them," *id.* at 762 n. 20, yet under the Montana court's formulation, BNSF and other large railroads likely would be found at home in every state in which they operate. If that were the law, there would be no way for a railroad to predict where on its system it might be sued in FELA cases. As Judge Baugh recognized in granting BNSF's motion to dismiss respondent Nelson's suit, if "BNSF is 'at home' in Montana, it is also 'at home' in most, if not all, of the 27 other states in which it operates." Pet. App. 39a.

This is not merely speculation; it is a reality of FELA litigation that underscores the importance of granting the petition. BNSF has advised this Court that it is the defendant in 32 FELA cases in Montana state court—in none of them did the cause of action arise in Montana. Pet. at 24-25. And that is just the tip of the iceberg. Disregard of the constitutional requirements of personal jurisdiction set forth in *Daimler* and *Goodyear* is occurring in state courts nationwide in FELA cases.

AAR's large freight members have advised AAR that at least 170 FELA cases are pending against them in the courts of states that are neither (1) the railroad's state of incorporation; (2) the railroad's principle place of business; nor (3) the state where the alleged injury giving rise to the suit occurred. These suits are spread throughout the country, although a few states, like Montana, Missouri, Illinois and Pennsylvania, appear

to be magnet jurisdictions for FELA litigation against nonresident railroads. This Court's resolution of the question presented in the petition would resolve personal jurisdiction in each of these case.

In particular, addressing the question presented would provide guidance to state courts around the country on when they can properly assert personal jurisdiction in FELA cases. Unless, as the Montana Supreme Court contends, the *Daimler* and *Goodyear* holdings do not apply to FELA cases, then there are many FELA suits pending in state courts throughout the nation where the court has not properly exercised personal jurisdiction over the railroad defendant.

3. Congress Did Not Grant Personal Jurisdiction Over Railroads in FELA Cases to Courts in Every State in Which the Railroad is Doing Business.

Not only did the court below hold that this Court's decisions in *Daimler* and *Goodyear* do not apply to FELA cases, it asserted that this Court has held that state courts have personal jurisdiction over railroads in FELA cases whenever the railroad is doing business in the state, citing to *Pope v. Atlantic Coast Line R.R.*, 345 U.S. 379 (1953), *Miles*, and *Baltimore & Ohio R.R. v. Kepner*, 314 U.S. 44 (1941). The Montana court concluded that "the U.S. Supreme Court consistently has interpreted 45 U.S.C. §56 to allow state courts to hear cases brought under the FELA even where the only basis for jurisdiction is the railroad doing business in the forum state." Pet. App. 8a. And the court further asserted that *Daimler* did not overrule those prior decisions. Pet. App. 12a.

It is not surprising that *Daimler* did not discuss those cases because none of them addressed personal

jurisdiction, let alone the constitutional requirements that must be met in order for a state court to exercise general personal jurisdiction. *See* Pet. at 19-20. As Justice McKinnon pointed out in her dissent below, the majority arrived at its conclusion "*without citing a single* general jurisdiction case," but instead cited prior decisions of this Court "having nothing to do with general jurisdiction under the Due Process Clause." Pet. App. 27a-28a (emphasis in the original). There would have been no need for this Court to overrule those decisions because they do not stand for the proposition that the normal test for general personal jurisdiction does not apply in FELA cases.

Faced with this Court's holdings that a state court may exercise general personal jurisdiction only over a corporation that is "at home" in the state, the court below concluded that "Congress drafted the FELA to make a railroad 'at home' for jurisdictional purposes wherever it is 'doing business.'" Pet. App. 12a. However, Congress may not countermand the requirements of the Constitution. Congress has no authority to affect the personal jurisdiction of state courts, and certainly has no power to grant state courts general personal jurisdiction over FELA defendants in circumstances that do not comport with the requirements of the Due Process Clause.

In any case, by concluding that Congress intended to confer general personal jurisdiction on state courts when it enacted 45 U.S.C. §56 of FELA, the court below misreads both the statute and congressional intent. Section 56 was enacted to address two specific problems, neither of which concerned the personal jurisdiction of state courts.

In its original form, FELA did not directly address jurisdiction; the statute simply provided that an action

must be brought within two years of the day it accrued.[4] For cases filed in federal court, in the absence of a specific venue provision the proper venue for FELA actions was governed by the general federal venue statute, which at the time limited venue to the district where the defendant was an inhabitant. Act of March 3, 1887, as amended by Act of August 13, 1888, c.866, 25 Stat. 433; *Cound v. Atchison, T. & S.F. Ry. Co.*, 173 F. 527, 533 (W.D. Tex. 1909) (under the federal venue statute, a FELA suit must be brought in the district where the railroad is an inhabitant, i.e., the state of incorporation); *Smith v. Detroit & T. Shore Line R.R.*, 175 F. 506 (N.D. Ohio 1909) (same). Some members of Congress felt that this limitation for federal cases was too restrictive.

Moreover, even though nothing in FELA abrogated the default rule of concurrent subject matter jurisdiction in state courts over federal causes of action, *see Claflin v. Houseman*, 93 U.S. 130, 136-37 (1876), shortly after FELA was enacted the Supreme Court of Connecticut held that "Congress did not intend . . . to authorize the institution of an action under [FELA] in the courts of the States." *Hoxie v. N.Y., N. Haven & Hartford R.R.*, 73 A. 754, 762 (Conn. 1909).

Dissatisfaction with the scope of venue for FELA cases in federal court, and a desire to correct the error in *Hoxie*, led Congress to amend FELA in 1910 to add the current language of 45 U.S.C. §56, which reads:

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[4] FELA was first enacted in 1906, but was struck down as being beyond Congress' constitutional authority. *Howard v. Ill. Cent. R.R.*, 207 U.S. 462 (1908). FELA was reenacted in 1908, and was upheld by this Court as constitutional in all regards. *Mondou v. N.Y., N. Haven & Hartford R.R.*, 223 U.S. 1 (1912).

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states.

Act of April 5, 1910, c. 143, §1, 36 Stat.291.[5] The 1910 amendment also prohibited removal to federal court of FELA suits originally brought in state court. 28 U.S.C. §1445(a).

The first sentence of this amendment explicitly addressed venue in *federal* courts, and was intended to expand federal venue beyond the narrow prescriptions of the general venue statute in order to enhance the convenience of both parties. ("This amendment is necessary in order to avoid great inconvenience to the suitors . . ." H.R. REP. NO. 513, at 6 (1910).) "Section 6 establishes venue for an action in the federal courts." *Kepner*, 314 U.S. at 52. In *Pope*, this Court described Section 56 as the "venue provisions of the Federal Employers' Liability Act," 345 U.S. at 383. The Court also characterized a bill to amend Section 56, as addressing the question "of whether venue should be more narrowly restricted." *Id.* at 386.

The second sentence of the 1910 amendment addressed the states' *subject matter* jurisdiction in FELA cases. The amendment overruled *Hoxie* and simply clarified that states were competent to hear FELA

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[5] A 1939 amendment increased FELA's statute of limitations from two to three years. Act of Aug. 11, 1939, c. 685, §2, 53 Stat. 1404.

actions. H. REP. NO. 513, at 7 (1910) ("[M]uch injustice and wrong to suitors may be prevented by an express declaration that there is no intent on the part of Congress to confine remedial actions brought under [FELA] to the courts of the United States."); *see also* 45 CONG. REC. 2253 (1910) ("I am very sure that [state courts] have concurrent jurisdiction as the law is now, but on account of a decision of one of the state courts of Connecticut . . . the committee thought best to expressly provide in the law that the federal courts and the state courts should have concurrent jurisdiction to avoid the possibility of such a construction in the future.") (remarks of Representative Sterling). When the bill was taken up by the Senate, Senator Borah, noting the *Hoxie* decision, explained that the provision expressly granting concurrent jurisdiction to state courts, simply reflected what "the law is . . . unless there is a clause prohibiting or inhibiting the state court it always has concurrent jurisdiction with the federal courts in such a *subject-matter* as this." 45 CONG. REC. 3995 (1910). (emphasis supplied)

Contrary to the Montana court's decision below, Section 56 was not intended to confer personal jurisdiction on state courts. Rather, the purpose of Section 56 was to expand federal venue so FELA actions could be brought in additional federal courts beyond what was permitted by the existing general venue statute, and to confirm that state courts shared subject matter jurisdiction with federal courts. In *Mondou*, this Court observed that "[t]he amendment . . . instead of granting jurisdiction to the state courts, presupposes that they already possessed it." 223 U.S. at 56. This Court further explained that the 1910 amendment to Section 56 did not "involve any attempt by Congress to enlarge or regulate the jurisdiction of state courts, or to control or affect their modes of procedure." *Id.* In *Miles*, this

Court explained that "[s]ince the existence of the cause of action and the privilege of vindicating rights under the F.E.L.A. in state courts springs from federal law, the right to sue in state courts of proper venue *where their jurisdiction is adequate* is of the same quality as the right to sue in federal courts." 315 U.S. at 704 (emphasis supplied). There simply is no basis for concluding that Congress intended to confer personal jurisdiction on state courts when it amended FELA in 1910.

Perhaps sensing that it misconstrued the purpose of Section 56, the court below opined that it is unclear whether Congress meant to confer subject matter or personal jurisdiction on state courts. Pet. at 14a. The court resolved that question by finding that FELA's "liberal construction" justifies reading Section 56 to confer on state courts personal jurisdiction over any FELA defendant doing business in the forum state, a far more expansive concept of personal jurisdiction than the Due Process Clause allows. Pet. at 14a; *see also* Pet. at 18a ("We also have followed federal case law in giving the FELA a liberal construction to accomplish its humanitarian and remedial purposes (citations omitted). This is especially true regarding a plaintiff's forum selection under the FELA.") But a liberal construction of a statute is not a justification for abrogating a defendant's constitutional rights.

FELA's oft-remarked-upon liberal construction refers to its express modification of early twentieth century common law, which Congress believed was necessary in order to facilitate recovery at a time when common law rules often made recovery difficult for injured workers. This included eliminating the assumption of risk and fellow servant doctrines, 45 U.S.C. §54; *Chesapeake & Ohio Ry. Co. v. De Atley*, 241

U.S. 310, 313 (1916), and replacing the rule that barred recovery entirely if the worker's negligence contributed to the injury with a comparative negligence scheme. 45 U.S.C. §53. It also included incorporating a more relaxed standard of causation than traditional proximate cause. *CSX Transp., Inc. v. McBride*, 564 U.S. 685 (2012). Finally, FELA outlawed contracts and devices the purpose of which is to limit the railroad's liability. 45 U.S.C. §55. Regardless of whether FELA should be construed "liberally," it is not possible to construe Section 56 as a grant of personal jurisdiction to state courts where the Due Process Clause forbids.

* * * *

This Court has instructed that there are constitutional limits on a state's ability to hale nonresident corporations into the state's courts to hear a cause of action that did not arise in the forum state, even if the corporation has continuous and systematic contacts with the state. Contrary to those rulings, the court below held that Montana may exert general personal jurisdiction over any nonresident railroad that does business in the state if the railroad is a defendant in a FELA action. As a result, by virtue of operating in many states—an inherent aspect of the business of large railroads—railroads will be subject to suit in states that have no connection to the underlying litigation, and where they are not "at home." This sets railroads apart as a unique class of corporate defendants that are outside the protection of the Due Process Clause. Only this Court can correct that error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

KATHRYN D. KIRMAYER
DANIEL SAPHIRE
Counsel of Record
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
(202) 639-2505
dsaphire@aar.org

Counsel for Amicus Curiae Association of American Railroads

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